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Federal Maritime Commission  
Office of the Secretary

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**Docket No. 14-06**

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**SANTA FE DISCOUNT CRUISE PARKING, INC. d/b/a EZ  
CRUISE PARKING; LIGHTHOUSE PARKING, INC.; and  
SYLVIA ROBLEDO d/b/a 81<sup>st</sup> DOLPHIN PARKING**

**Complainants**

**v.**

**THE BOARD OF TRUSTEES OF THE GALVESTON  
WHARVES and THE GALVESTON PORT FACILITIES  
CORPORATION**

**Respondents**

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**RESPONSE TO MOTION TO DISMISS BY  
THE BOARD OF TRUSTEES OF THE GALVESTON WHARVES  
AND THE GALVESTON PORT FACILITIES CORPORATION**

Respondents. The Board of Trustees of the Galveston Wharves ("Wharves") and the Galveston Port Facilities Corporation ("GPFC") (Wharves and GPFC sometimes collectively referenced as "Respondents") have requested an Order dismissing Santa Fe Discount Cruise Parking, Inc. d/b/a EZ Cruise Parking; Lighthouse Parking, Inc.; and Sylvia Robledo d/b/a 81<sup>st</sup> Dolphin Parking's Complaint *in toto* against Respondents.

In summary, Respondents allege (1) that Complainants' claims related to Tariff Circular No. 6 (the "Tariff") must be dismissed as moot because Respondents amended same on September 22, 2014 – during the pendency of this action – to eliminate the challenged category

of access fee rates; (2) that Complainants' claims regarding access points are not related to the Tariff, not justiciable under the Shipping Act, and preempted by Homeland Security Laws and Regulations; (3) that Complainants' claims regarding refusal to deal or negotiate are not "justifiable" under the Shipping Act, and preempted by Homeland Security Law and Regulations.

Respondents' assertion that Complainants' claims must be dismissed as moot lacks merit, because – at best – Respondents' amendment to the Tariff on September 22, 2014 only rendered this case moot on one of the issues and bolstered the viability of others. If the allegations in the Verified Complaint (the "Complaint") are taken as true, Complainants' remaining and outstanding claims state valid causes of action under the Shipping Act. Despite Respondents' contention otherwise, all of the issues identified fall exclusively within the Commission's expertise and within its broadly delegated authority to enforce the Shipping Act.

**COMMISSION RULES OF PRACTICE AND PROCEDURE  
FOR CONSIDERATION OF A MOTION TO DISMISS**

The Federal Maritime Commission's Rules of Practice and Procedure ("Commission's Rules"), 46 C.F.R. part 502, do not explicitly provide for a motion to dismiss for lack of subject matter jurisdiction or a motion to dismiss for failure to state a claim. Rule 12 of the Federal Maritime Commission's Rules of Practice and Procedure further explains that "for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure ("Federal Rules") will be followed if they follow sound administrative practice." 46 C.F.R. § 502.12 (2014). As the Commission's Rules do not address motions to dismiss for lack of subject matter jurisdiction or failure to state a claim, Federal Rules 12(b)(1) and 12(b)(6) apply in this case. *See, e.g., The Lake Charles Harbor and Terminal District v. West Cameron Port, Harbor and Terminal District*, 2007 WL 2468431 (F.M.C.).

Rule 12(b)(1) permits a party to raise by motion lack of subject matter jurisdiction, and Rule 12(b)(6) permits a party to raise by motion failure to state a claim. With regard to motions to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), such motions may assert either a factual attack or a facial attack to jurisdiction. A factual attack challenges the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits, are considered. In a facial attack, on the other hand, the court examines whether the complaint has sufficiently alleged subject matter jurisdiction. As it does when considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court construes the complaint in the light most favorable to the plaintiff and accepts all well-pled facts alleged in the complaint as true.

*Streak Products, Inc. v. UTi, United States, Inc.*, Docket No. 13-04, Order at 5 (ALJ Oct. 23, 2013) (Order Denying Respondent's Motion to Dismiss) (citing *Sinaltrainal v. Coca-Cola Company*, 578 F.3d 1252, 1260 (11th Cir. 2009)).

To survive motions to dismiss for failure to state a claim under Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim "has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). The complaint must be sufficient to "give the defendant fair notice of what the ... claim is and the grounds upon which it rests." *Bell Atlantic*, 550 U.S. at 555 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); see also 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure Civ.* § 1215 (3d ed. 2010) ("[T]he test of a complaint's sufficiency simply is whether the document's allegations are detailed and informative enough to enable the defendant to respond.").

*Id.* at 5-6 (citing *Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc.*, FMC No. 09-01, Order at 19-20 (FMC Aug. 1, 2011) (Order Denying Appeal, etc.)).

The Commission has jurisdiction over allegations that "involve elements peculiar to the Shipping Act." Allegations "involving unfair or unjustly discriminatory practices, undue or unreasonable preferences, undue or unreasonable prejudice or disadvantage, and just and reasonable regulations and practices, are inherently related to Shipping Act prohibitions and are therefore appropriately brought before the Commission."

*Id.* at 6 (citing *Cargo One, Inc. v. Casco Container Lines Co., Ltd.*, 28 S.R.R. 1635, 1645 (FMC 2000)).

## ARGUMENT

### **1. Respondents' amendment eliminating "Off Port Parking Users" from the Tariff from the Tariff does not render all issues raised in the Complaint as moot.**

In moving to dismiss this action, Respondents contend that the September 22, 2014 amendment to the Tariff rescinding their previous increase in Off Port Parking User Access Fees from \$8.00 to \$28.88 per space per month renders the issues in this case moot, because Complainants will now only be charged the \$8.00 per space per month for the period from July 1, 2014 (the effective date of the May 2014 increase) to October 1, 2014 (the effective date of the September 22, 2014 elimination of Off Port Parking Users from the Tariff). (Respondents' Motion to Dismiss at 3.)

In support of their Motion to Dismiss, Respondents cite *American Food Corporation v. Port of Harlingen Authority*, 1985 WL 148946 (F.M.C. 1985) for the proposition that "the issue of the lawfulness of the Port's tariffs and practices has become moot [and] there is no longer any controversy for the Commission to resolve." (Respondents' Motion to Dismiss at 3.) However, *American Food* was rendered under a stipulated motion to dismiss submitted *jointly* by the parties after settling of complaints relating to the port's tariff and release of complainant's corresponding claims for reparations and attorney's fees. See 1985 WL 148946 at \*1. Here, Complainants have neither joined in requesting dismissal, settled their complaints relating to the Tariff, nor released their claims for reparations and attorney's fees and, therefore, *American Food* is wholly inapposite to the situation at bar.

Respondents next cite *United States v. Alaska Steamship Company*, 253 U.S. 113, 116 (1970) as support for their argument that "when issues initially raised in a complaint are no longer in controversy the proceeding may be dismissed as being moot." (Respondents' Motion to Dismiss at 3-4.) However, the situation in this case is a far cry from that presented in *Alaska*

*Steamship*, where the Supreme Court refused to review as moot the “initially raised issue” regarding the Interstate Commerce Commission’s power to require that carriers comply with an ICC order prescribing certain bills of lading after Congress passed new legislation during pendency of the appeal requiring the bills to be changed to conform therewith. 253 U.S. at 115-17. Post remedial legislation by Congress is not even remotely contemplated by the facts of this case.

Finally, Respondents cite a string of cases to support their contention that the Commission has consistently granted a motion to dismiss based on mootness where by act of a party or parties to an existing controversy has come to an end. (Respondents’ Motion to Dismiss at 4.) However, the initial five cases cited in string were the subject of an apparent “cut and paste” exercise from footnote 3 of the sixth case, *Distribution Services Limited v. Asia North America Eastbound Rate Agreement*, 1990 WL 454990, Docket Nos. 90-02 and 90-04 (F.M.C.), and therefore are not specifically analyzed. In *Distribution Services*, the complainants sought only a cease and desist order regarding objectionable service contract provisions that the respondents discontinued after filing of the complaint with the Commission. *Id.* at \*1. In recognizing that their decision granting the respondents’ motion to dismiss “was a close one,” the Commission reasoned that “the provisions no longer exist in any service contract in which ... [the respondents were] parties. Even more importantly, there is no claim for reparations. Further, the proceeding has not progressed to the point where the parties have expended large sums of money. . . . [and] Respondents have agreed they will not enter into any service contract containing the objectionable provisions for a period of two years . . .” *Id.* at \*2 (recognizing complainants “should not be put to the expense of litigation in the future, only to have respondents withdraw after ‘testing the water.’”)

The seventh and last case in Respondents' string citation – and the final case relied upon to support dismissal based upon mootness – is *New Orleans S.S. Ass'n v. Plaquemines Port Harbor & Terminal Dist.*, 816 F.2d 1074, 1077 (5th Cir. 1987), which included the following parenthetical statement: “amendment of tariff rendered moot request to enjoin enforcement of rates under prior tariff.” (Respondents' Motion to Dismiss at 4.) Actually, in *Plaquemines*, the F.M.C. adopted the administrative law judge's order nullifying the harbor district's tariff. *Id.* at 1076. Upon entry of the Commission's order, the steamship association immediately moved to enjoin the harbor district against *future* assessments under the tariff. *Id.* Just as in *Distribution Services*, the steamship association asserted no claim for reparations. The harbor district then filed a revised tariff eliminating the invalidated provisions, and same was formally approved thereafter. *Id.* Based upon the fact that the harbor district had eliminated those portions previously found invalid, the Fifth Circuit upheld the district court's dismissal because the case otherwise only related to an injunction against future assessments rendered moot by the revised tariff. *Id.* at 1077.

This case is distinguishable from *Distribution Services* and *Plaquemines*. Unlike the complainants in those cases, the Complainants here have asserted valid claims for reparations and expended large sums of money in this proceeding. To date, Complainants have incurred \$56,316.37 in attorney's fees and expenses,<sup>1</sup> and have previously paid hundreds of thousands of dollars in alleged illegal assessments on their parking spaces prior to the Tariff being increased in May 2014.

The Tariff continues to be unlawful even after the September 22, 2014 amendment because it continues to preferentially exempt certain commercial vehicles, such as taxicabs, from access fees and fails to resolve Complainants' previous and outstanding discriminatory practice

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<sup>1</sup> See Ex. C, Affidavit of Brenton Allison, legal counsel for Complainants.

complaints regarding enforcement issues. Further, Respondents are attempting to recover the same amounts of money from Complainants by a different means. Respondents' act in amending their Tariff on September 22, 2014 did not bring Complainants' existing controversy to an end and, therefore, Respondents' motion to dismiss should be denied.

**A. An actual controversy remains over Complainants' entitlement to reparations for previously paid assessments of illegal Off Port Parking User Access Fees.**

Contrary to Respondents' representation otherwise, an outstanding controversy still remains regarding the Tariff's treatment of Complainants as "Off Port Parking Users" prior to same being increased in May 2014. Despite Respondents' self-serving references to the fact that Complainants have continued to pay the Board of Trustees monthly Access Fees based on the former Tariff's rates in effect prior to the May 19, 2014 Amendment (i.e., \$8.00 per space per month),<sup>2</sup> such payments were made under an Agreed Interim Order (the "Agreed Order") entered by the Honorable Nancy K. Johnson in related Case No. G-14-CV-206; *Robledo, et al. v. The Board of Trustees of the Galveston Wharves, et al.*, pending in the United States District Court for the Southern District of Texas.<sup>3</sup> Importantly, regarding Complainants' claims challenging the propriety of the Port's previous assessments on their parking spaces, paragraph 9 of the Agreed Order specifically states:

[t]his Agreed Interim Order in no way constitutes an acknowledgment or admission by [Complainants] as to the propriety, legality, reasonableness or fairness of monthly Access Fees set forth in the Tariff prior to the May 19, 2014 Amendment, paid or to be paid to The Board of Trustees pursuant to this Agreed Interim Order.

(Ex. A at 5.)

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<sup>2</sup> See Respondents' Motion to Dismiss at pg. 2, n. 1; and at pg. 3, n. 4

<sup>3</sup> A copy of the Agreed Order has been attached hereto as Ex. A.

Further, Complainants filed their Complaint prior to the effective date of May 2014 increase, which included a claim for reparations from Respondents for illegal assessments of Off Port Parking User Access Fees already made on that basis. The Complaint states :

Complainants have been charged “Access Fees” under Respondents’ Tariff that are excessive and not reasonably related to the value of services rendered to Complainants. Through application of such charges, Complainants have been forced to subsidize Respondents’ costs associated with services provided to other users of port facilities. Such other users therefore receive greater levels of service and benefit from the Respondents’ services at a lower cost. (Complaint at 1.)

Complainants therefore seek a cease and desist order and reparations for injuries and damages caused to them by the Respondents’ violations of the Shipping Act, 46 U.S.C. §§ 41102(c), 41106(2) and (3), including (a) subjecting Complainants to an undue or unreasonable prejudice or disadvantage: (b) granting an undue preference or advantage with respect to other users of its facilities: (c) failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property: and (d) unreasonably refusing to deal or negotiate with Complainants regarding modification of the unreasonable rates and charges. (*Id.* at 2.)

Moreover, their Complaint specifically alleges that Respondents’ prior assessments of Off Port Parking User Access Fees before the filing date were illegal and in violation of the Shipping Act, to wit:

Complainants have been charged monthly Access Fees based upon the total number of parking spaces in their respective lots that are excessive and not reasonably related to the value of services rendered to Complainants by Respondents. Through application of such “tax,” Complainants have been forced to subsidize costs associated with services provided to other users of the Cruise Terminal’s facilities. (Complaint ¶ V.B.)

In response to the foregoing, Respondents essentially contend that Complainants are estopped from challenging the Tariff in effect prior to May 2014, by arguing that “Complainant Santa Fe Parking . . . had requested the ‘Off Port Parking Users’ fees in lieu of access fees charged on a per-trip basis” and “[a]ll Complainants operated under that fee scheme for well over 3 years prior to bringing their claims in this proceeding.” (Respondents’ Motion to Dismiss at 2, n. 1.) These arguments fail against the backdrop of *Ceres Marine Terminals, Inc. v.*



*Maryland Port Administration*, FMC No. 94-01, Order at 53 (FMC August 15, 2001), wherein the Commission held that, “. . . as a matter of law, the common law doctrines of waiver and estoppels may not be invoked to prohibit a party to an agreement subject to the Commission’s jurisdiction from later challenging the agreement in a complaint filed with Commission alleging that one of the parties . . . violated a duty imposed on it under the Shipping Act.”

Although Complainants’ claim *may be* moot regarding their treatment as “Off Port Parking Users” in the future, they still have viable claims for reparations based upon the alleged invalid assessments previously made by Respondents on that basis. Respondents know this; that’s why they removed the complained of provision from their Tariff after Complainants sued challenging same. Based upon the Port Director’s own admission, Respondents removed “Off Port Parking Users” from the Tariff because “it appeared [Respondents] were treating private parking lot owners differently from motel/hotel operators who are charged a per trip access fee.” (Ex. B, Audio Transcription of Hearing Amending Tariff on 9/22/14, at 3:19 – 4:15.) Respondents’ decision to rectify their Tariff’s disparate treatment has bolstered – not mooted – Complainants’ claim for reparations and, therefore, Respondents’ motion to dismiss should be denied as to same.

**B. An actual controversy remains over Complainants’ previous and outstanding discriminatory practice complaints.**

In addition, Respondents’ amendment removing “Off Port Parking Users” from the Tariff does not resolve Complainants’ previous and outstanding discriminatory practice complaints regarding Access Fee enforcement issues. The Complaint also complains that Respondents:

Unreasonably, unjustifiably, and with undue prejudice, refusing to observe, implement, enforce and collect Access Fees from all Off-Port Parking Users under the Tariff. (Complaint ¶ V.G.1.)

Imposing an unreasonable, unduly prejudicial, and discriminatory allocation of the Cruise Terminal’s costs upon Complainants, but not all other users of the

Respondent's services under Tariff Circular No. 6, Item 111 – Other Licenses and Permits. (*Id.* ¶ V.G.2.)

To the extent cash reserves have been, or will be used to approximate either GPFC or the Port of Galveston's total operating expenses, the charges levied against Complainants to build such revenues are not reasonably related to the operating expense associated with the Wharves Board's operations at the Cruise Terminal. (*Id.* ¶ V.C.)

Respondents have unreasonably refused to deal or negotiate with Complainants regarding their recent string of modifications to their Tariff with respect to Access Fees. . . . Respondents refusal to negotiate is based upon intentionally misleading information about the Cruise Terminal's financial condition and not any legitimate business rationale and therefore is unreasonable. (*Id.* ¶ V.E.)

Complainants' discriminatory practice complaints focus both on past and present conduct of Respondents, which remain unaffected by their September 22, 2014 amendment to the Tariff. As supported by referenced documentation and attached evidence, the Complaint alleges that Respondents historically have failed to charge and/or collect Access Fees from a material percentage – if not a majority – of commercial vehicles that have accessed the Cruise Terminal since the Tariff's inception.<sup>4</sup> Even in their meeting on September 22, 2014, Respondents' representative(s) conceded that they "still have enforcement issues" regarding Access Fees. (Ex. B, Audio Transcription of Hearing Amending Tariff on 9/22/14. at 8:22 – 9:10.) Outstanding issues similarly remain concerning whether Respondents unreasonably, unjustifiably, and/or prejudicially refused to observe, implement, enforce and collect Access Fees under their Tariff, and the extent to which Complainants are owed reparations due to same.

Respondents stated purpose for amending the Tariff on September 22, 2014 – to remedy treating private parking lot owners differently from motel/hotel operators – is a misnomer, because private parking lot operators *and* motel/hotel operators providing passenger parking and shuttle services were *both* "Off Port Parking Users" under the express terms of the prior Tariff.

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<sup>4</sup> See, e.g., Complaint at ¶¶ IV.I, M, and S.

(Complaint at ¶¶ IV.AA-DD.) By refusing to charge such motel/hotels the flat fee per month based on their total number of parking spaces, Respondents have already forced Complainants to subsidize their share of Cruise Terminal costs for several years, providing them with an undue preference or advantage over Complainants. Outstanding issues remain concerning whether Complainants are owed reparations and attorney's fees for the aforementioned unreasonable, unduly prejudicial, and/or discriminatory allocation of the Cruise Terminal's costs upon Complainants.

The fact that the Tariff's terms continue to treat motel/hotels the same as private parking lots for Access Fees should be of no significance to Complainants' discriminatory practice complaints. As evidenced by the Complaint. Respondents have contravened the express terms of their Tariff in the past in order to not treat such motel/hotels the same as private parking lot owners, and Respondents will likely continue in their lack of enforcement and other discriminatory practices in the future. (*See, e.g.*, Complaint at ¶¶ IV.Z-AA.) Outstanding issues also remain regarding the cease and desist order sought by Complainants.

**C. An actual controversy remains over Complainants' previous and outstanding complaints regarding the propriety and substantiation of Respondents' stated reasons for increasing the Tariff in May 2014.**

Notwithstanding the foregoing, even now, Respondents still seek to impose an unsubstantiated 100% increase in Per-Trip Access Fees from the former Tariff, and continue to exempt taxicabs from any charge. The 2014 Tariff remains unjust and discriminatory; even as modified it still favors taxicabs over other similarly situated commercial passenger vehicles accessing the Cruise Terminal like those operated by Complainants. (Complaint at ¶ IV.T, noting May 2014 Tariff continued to exempt taxicabs from any charge.) Any increase in Access

Fees from the former Tariff – regardless of whether charged on a Per-Space or Per-Trip basis – will place Complainants in not only a continued, but also a greater disadvantage than before.

Even recently, the Wharves Board still failed to conduct, arrange for, or even consider any study or analysis that would enable them to evaluate their anticipated revenue from charging Complainants on a Per-Trip instead of on Per-Space basis when they changed the Tariff on September 22, 2014. The Port Director, Michael J. Mierzwa, simply stated:

“[t]he feeling from the staff is that this \$20.00 [Per-Trip Access Fee] will get us the revenues we sought when we went to the \$28.88 Per-Space-Per-Month [Access Fee]. At this time next year, we will look at the same things that we looked at when we determined the Per-Parking-Space Fee; the expenses of what it costs to run the Cruise Terminal operation, and the money we are getting from Access Fees and the money that the Port is paying in to offset that ‘delta’ that we had between ‘these are our expenses – this is what we are making from our cruise line operating agreement – and this is the delta that needed to be paid for out of parking,’ and we will take a look at the revenue generated and adjust the [Per Trip Access Fees] either up or down; but I’m gonna need a year to look at the numbers before I can come back with an amendment to the Tariff.”

(Ex. B, Audio Transcription of Hearing Amending Tariff on 9/22/14, at 6:13 – 7:18.)

The modified 2014 Tariff continues to be unlawful because Respondents are still attempting to recover the same amounts of money from Complainants by a different means. Respondents’ still lack a rational basis for their decision to charge Complainants \$20.00 Per-Trip Access Fees under the May 2014 Tariff instead of the \$10.00 charge in effect prior thereto. By the Port Director’s own admission, their decision to “modify” the 2014 Tariff was based entirely on the staffs’ “feeling” and, therefore, is irrational beyond contention.

Further, the increase in Per-Trip Access Fees is just as unlawful as the Per-Space increase, because Respondents predicated their need to charge more in both instances upon the alleged loss in the Port of Galveston Analysis of Access Fees that inaccurately reflects an approximate 1.5M loss experienced by the Cruise Terminal. The costs that the Wharves Board

seeks to impose on Complainants still are not reasonably related to services rendered by Respondents.

Respondents have unreasonably failed to negotiate with Complainants regarding such increases, because Respondents are utilizing same to generate revenue to pay for another cruise terminal. (Complaint ¶ IV.W.) Indeed, this was clarified by the Chairman of the Board, when he indicated as follows:

We got potential customers that want to come. We need to build another terminal. We don't have the money to build it. We got to do that. That's going to increase traffic to you, for us, for everybody else; but it's got to be built. Somebody's got to pay for it. All right. So we got to generate revenue to pay for it. . . . (*Id.*)

The Commission must ensure that any fee imposed on port users [like Complainants] generates actual benefits to the user on a reasonably equivalent basis. *See Volkswagenwerk Aktiengesellschaft v. F.M.C.*, 390 U.S. 261, 282 (1968). Respondents may not assess increases in Access Fees under their Tariff for the construction and development of a large-scale, port-related infrastructure and development project because the benefits would accrue to both those paying and not paying the fees, and/or the costs of which would be incurred by those not enjoying the benefit. By imposing an arbitrary and irrational increase on Complainants under such dubious pretenses, Respondents as marine terminal operators, failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property; and unreasonably discriminate, prejudice, and place the Complainants at a disadvantage.

**2. Complainants have stated a claim for unreasonable refusal to deal.**

Respondents' argument that Complainants fail to state a claim under Section 41104(10) fares no better than their other arguments. Respondents assert that Complainants have failed to

establish how they have refused to deal or that their alleged failure to do so was objectively unreasonable. In so arguing, however, they ignore the allegations and the fact that same are before the Presiding Judge in a motion to dismiss. The Complaint expressly asserts that Respondents' refusal to negotiate "is based upon intentionally misleading information about the Cruise Terminal's financial condition and not any legitimate business rationale and therefore is unreasonable." (Complaint at ¶ V.E.) As previously indicated, Complainants have alleged that Respondents purposefully and wrongfully allocated certain costs and expenses against the Cruise Terminal's revenue flow to show a loss that would support raising their Tariff for access fees to generate revenue to pay for another cruise terminal. (Complaint ¶¶ IV.N – Q, and W.) As previously outlined, Respondents' refused to negotiate over the increase because same was being *earmarked for development of a new cruise terminal*, which is unreasonable and unrelated to legitimate transportation considerations.

Faced with these allegations, which must be accepted as true in this context, Respondents argue that "the Wharves did negotiate with Complainants before the May 2014 amendment . . . was adopted." (Respondents' Motion at 6.) Respondents' "negotiation" tactics, however, amount to nothing more than "bullying" or "offers you can't refuse" – as demonstrated by their conduct in amending the Tariff's access fees three times this year already (i.e., November 2013, May 2013, and Sept. 2013). Respondents assert that the fact that Complainants' representatives came to a public meeting of the Board of Trustees to communicate their position should be construed as meaning Respondents must have negotiated in that regard. No such inference is warranted, however, particularly not in a motion to dismiss where all reasonable inferences are drawn in favor of Complainants.

Respondents cite *Seacon Terminal, Inc. v. Port of Seattle*, 26 S.R.R. 886 (1993), as support for their argument that Complainants must make a showing that Respondents' "refusal of an offer cannot simply be equated with a refusal to deal or negotiate." (Respondents' Motion at 8.) Significantly, however, in *Seacon*, the Commission reached its determination there was not an unreasonable refusal to deal or negotiate only after "an extensive discovery process (which included around-the-world depositions and thousands of pages of documents and a lengthy hearing . . .)" *Id.* at 897. Far from establishing that allegations of a refusal to deal or negotiate should be dismissed at the pleading stage, the Commission's Order in *Seacon* reflects that such determinations require a careful review of the facts supporting such assertions.

**3. Respondents' argument that Complainants' shuttles are not taxicabs for hire establishes a fact issue warranting further discovery.**

Finally, Respondents' have argued that Complainants' shuttle buses are not similarly situated for their facial complaints about the Tariff, because shuttle buses are not vehicles for hire regulated by the City of Galveston. Respondents' argument, however, expressly recognizes a fact issue exists as to whether Complainants' shuttle buses are operated for hire, because the City Code failed to define that term. Complainants actually may offer discounts to persons who might choose not to ride their shuttle buses to the cruise terminal.

Additionally, Respondents failed to raise Chapter 35 of the City of Galveston Code as an affirmative defense in their Answer. Further, Respondents have likewise failed to establish, for dismissal, why the City Code provision limiting what taxicabs can charge per mile would leave taxicabs without means of recouping access fees from passenger patrons, or why same would preclude Complainants from comparing their shuttle buses to taxicabs to state a claim under the Shipping Act. Complainants may engage in discovery to substantiate their claims. Respondents' Motion to Dismiss must be denied.

**CONCLUSION**

Complainants respectfully request that Your Honor deny Respondents' Motion to Dismiss their Verified Complaint.

Respectfully submitted,

GILMAN \* ALLISON LLP

A handwritten signature in black ink, appearing to read 'Douglas T. Gilman', is written over a horizontal line.

**Douglas T. Gilman**

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Sylvia Robledo d/b/a 81<sup>st</sup> Dolphin Parking**



**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed this document on this **10th day of November, 2014**, and that a true and correct copy of the foregoing was served on all counsel of record *via* certified mail – return receipt requested and email, as indicated below:

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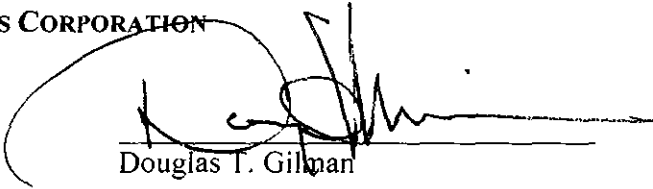
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**ATTORNEYS FOR THE BOARD OF TRUSTEES OF THE GALVESTON WHARVES  
AND GALVESTON PORT FACILITIES CORPORATION**



Douglas T. Gilman



## FINDINGS

1. On or about June 16, 2014, Plaintiffs filed a Verified Complaint with the United States Federal Maritime Commission, alleging that amendments to Board of Trustees' Tariff Circular No. 6, Item 111 relating to Access Fees charged to Off-Port Parking Users violated 46 U.S.C. §§41102(c), 41106(2) and 41106(3). This Verified Complaint was assigned Docket Number 14-06, and is referred to hereafter as "the FMC Proceeding."
2. Defendants have filed an Answer to the FMC Proceeding, denying Plaintiff's claims in full and raising affirmative defenses thereto.
3. On or about June 26, 2014, Plaintiffs filed their Complaint in this Case, seeking, among other things, interim injunctive relief pending a final decision in the FMC Proceeding, pursuant to 46 U.S.C. §41306.
4. On August 1, 2014, Defendants filed an Answer in this Case, denying Plaintiff's claims in full and raising affirmative defenses thereto.
5. On July 15, 2014 Plaintiffs filed Plaintiff's Motion, seeking a Temporary Restraining Order and additional Relief. Plaintiffs Motion was initially set for hearing on July 31, 2014, and was subsequently re-set for hearing on August 5, 2014 by agreement of the parties.
6. Without admitting any of the claims or allegations asserted by the other parties, Plaintiffs and Defendants have agreed to the terms of this Agreed Interim Order set out below, in order to avoid the time and expense of a contested hearing on Plaintiff's Motion.
7. In order to avoid the uncertainties and substantial costs associated with continued litigation over the injunctive issues raised in the Motion. Plaintiffs and Defendants have agreed to the entry of this Agreed Interim Order with respect to the nature and extent of relief sought in the Motion. However, the parties further agree, and the Court so orders,

that the parties' agreement in submitting this Agreed Interim Order is: (1) without prejudice to any party's respective legal position, (2) expressly not a judicial admission of any fact or law issue, (3) to be construed as a compromise of a dispute over injunctive issues only, and (4) simply an effort to try and expeditiously resolve the relief requested in the Motion.

8. The Court finds that the terms of this Agreed Interim Order are appropriate and that it should be entered. Accordingly,

IT IS HEREBY ORDERED:

1. Plaintiffs are not required to pay the Board of Trustees monthly Access Fees at the rate of \$28.88 per parking space set forth in the May 19, 2014 Amendment to the Tariff unless and until there is a final decision on the merits in the FMC Proceeding and this proceeding validating or upholding same in Defendants' favor.
2. Plaintiffs Santa Fe Discount Cruise Parking Inc. d/b/a EZ Cruise Parking and Lighthouse Parking, Inc. are directed to pay the Board of Trustees' invoice dated July 2, 2014 in the amount of \$1,840.00 no later than August 8, 2014.
3. Plaintiffs are directed to pay the Board of Trustees monthly Access Fees pursuant to the former Tariff in effect prior to the May 19, 2014 Amendment on or before the first Monday of each calendar month following the Court's entry of this Agreed Interim Order pending final decision on the merits or resolution of Plaintiffs' claim(s) in the FMC Proceeding and this proceeding, in the following amounts:

- |    |                                       |            |
|----|---------------------------------------|------------|
| a) | Santa Fe Discount Cruise Parking, Inc | \$3,304.00 |
| b) | Lighthouse Parking, Inc.              | \$1,840.00 |
| c) | Sylvia Robledo, d b a 81' Dolphin     | \$1,080.00 |

4. Plaintiffs are directed to pay to the Clerk of the Court, and the Clerk of Court is hereby directed to accept and maintain three separate monthly deposits ("Monthly Deposits") from each respective Plaintiff on or before the first Monday of every calendar month following the Court's entry of this Agreed Interim Order pending final decision on the merits or resolution of Plaintiffs' claim(s) in the FMC Proceeding and this proceeding in the following amounts:
- a) Santa Fe Discount Cruise Parking, Inc. \$8,623.44
  - b) Lighthouse Parking, Inc. \$4,802.40
  - c) Sylvia Robledo, d/b/a 81<sup>st</sup> Dolphin \$2,818.80
5. Consent to entry of this Agreed Interim Order shall not constitute a waiver by Defendants of any claim contesting subject matter jurisdiction in the FMC Proceeding and in this proceeding.
6. During the pendency of this Agreed Interim Order, Defendant Board of Trustees shall not deliver invoices to Plaintiffs. Defendant Board of Trustees may generate and maintain invoices to Plaintiffs for internal recordkeeping and bookkeeping purposes, but shall not mail or otherwise deliver invoices to Plaintiffs relating to the Access Fees forming the basis of the FMC Proceeding and this proceeding.
7. The Clerk of Court is hereby directed to maintain Plaintiffs' Monthly Deposits until such time as the total amounts in controversy have been resolved by final decision on the merits or resolution of Plaintiffs' claim(s) in the FMC Proceeding and this proceeding.

8. This Agreed Interim Order in no way constitutes an acknowledgment or admission by Defendants of any violation of any federal, state or local law, common law or local or municipal statute or regulation, or breach of any other legal obligation or duty of the parties to each other or any other person, or a waiver of sovereign or governmental immunity.
9. This Agreed Interim Order in no way constitutes an acknowledgment or admission by Plaintiffs as to the propriety, legality, reasonableness or fairness of monthly Access Fees set forth in the Tariff prior to the May 19, 2014 Amendment, paid or to be paid to The Board of Trustees pursuant to this Agreed Interim Order.
10. This Agreed Interim Order is binding and enforceable by citation of contempt of Court, and all proceedings relating to enforcement of or compliance with the terms of this Agreed Interim Order shall be brought in this same United States District Court for the Southern District of Texas, which Court shall retain continuing jurisdiction to enforce the terms of this Agreed Interim Order.
11. Plaintiffs and Defendants, acting by and through their legal counsel, acknowledge their understanding of the terms, nature and scope of this Agreed Interim Order, and represent their free, willing, and knowing acceptance of this Agreed Interim Order as resolving the current dispute between them except as provided herein.

SIGNED AND ENTERED this \_\_\_\_\_ of August 2014

\_\_\_\_\_  
Hon. Nancy K. Johnson  
United States Magistrate Judge

**AGREED AND ENTRY REQUESTED:**

**GILMAN \* ALLISON LLP**

/s/ Douglas T. Gilman

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Attorneys for Complainants Santa Fe  
Discount Parking, Inc. d/b/a EZ Cruise  
Parking, Lighthouse Parking, Inc., and  
Sylvia Robledo d/b/a 81<sup>st</sup> Dolphin Parking

**McLeod, Alexander, Powel & Apffel, P.C.**

/s/ Anthony P. Brown \*By Permission DTG

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Attorneys for Defendants The Board of  
Trustees of the Galveston Wharves and  
Galveston Port Facilities Corporation

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

**IN THE MATTER OF:**

**SANTA FE DISCOUNT CRUISE PARKING, INC.  
d/b/a EZ CRUISE PARKING; LIGHTHOUSE  
PARKING, INC.; and SYLVIA ROBLEDO d/b/a 81<sup>st</sup>  
DOLPHIN PARKING**

**Complainants**

**Docket No. 14-06**

**- Vs.**

**THE BOARD OF TRUSTEES OF THE  
GALVESTON  
WHARVES and THE GALVESTON PORT  
FACILITIES CORPORATION**

**Respondents**



September 22, 2014

HELD AT: 8<sup>th</sup> Floor Shearn Moody Plaza  
123 Rosenberg Avenue,  
Galveston, TX 77550

APPEARANCES: BOARD OF TRUSTEES  
Benjamin F. Holland, Jr.  
Edward J. Walsh, III  
Richard D. DeVries  
Wm. Hulse Wagner  
Michael J. Mierzwa  
Peter Simons

TRANSCRIBER: Alison L. Fine

			RE	RE
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>DIRECT</u>	<u>CROSS</u>

E X H I B I T S

<u>PETITIONER</u>	<u>DESCRIPTION</u>	For <u>I.D.</u>	In <u>Ev.</u>
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<u>RESPONDENT</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>
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CHAIRMAN BENJAMIN HOLLAND: Before discussing the considering the Amendment to Tariff Circular No. 6, Item No., 111 to include but not to be limited to the following changes; who wants to address that?

TRUSTEE MICHAEL MIERZWA: I guess I'll start off with it. We've been talking about access fees and private parking lot fees for the better part of almost two years now, year and a half. In May 2014 the Board passed a change to the, an Amendment to the Tariff, which in addition to increase, including changes to insurance requirements, and decal fee amounts and application fees, and parking for charter buses, among others, it also adjusted the per parking space fee from \$8.00 per parking space to \$28.88 per parking space. We were taken to court by the private parking lot operators, and also they filed a complaint with the Federal Maritime Commission, on a con-current suit. Stating in effect that the access fee was excessive and was an application of the tariff book was discriminatory and provided for disparate

1 treatment of Port users, receiving services  
2 provided by the Galveston Wharves. Based upon  
3 some experience we had, as a result of the  
4 recent mediation, and the fact that it  
5 appeared that we were treating the private  
6 lot operators by charging them a per space  
7 fee different then we'll say Hotel Motel  
8 shuttles where we're charging them an access  
9 fee, in the interest of treating everybody  
10 equally, this amendment would treat everybody  
11 the same, and charge everybody an access fee,  
12 which is a graduated access fee depending on  
13 the size of the vehicle that you're bringing  
14 into the Port. So the segment in the tariff  
15 that talks about a per-space-charge will be  
16 deleted, the current language in the tariff  
17 which talks about per trip charges will now  
18 apply to the private parking lot operators  
19 and this would become effective October 1<sup>st</sup>.

21 VICE CHAIRMAN EDWARD WALSH III: So this  
22 will apply to everyone, everyone that brings  
23 in a bus will be charged in the same manner.

24 THE CHAIRMAN: That's  
25 correct.

CHAIRMAN BENJAMIN F. HOLLAND JR.: Okay,  
is there a motion?

VICE CHAIRMAN EDWARD WALSH III: Salute.

CHAIRMAN BENJAMIN F. HOLLAND JR.:  
Motion made. Second?

UNIDENTIFIED SPEAKER: (motions hand to  
Second)

CHAIRMAN BENJAMIN F. HOLLAND JR.:  
Second. Any question?

TRUSTEE RICHARD DEVRIES: I've got a  
question

CHAIRMAN BENJAMIN F. HOLLAND JR.:  
Question Sir.

TRUSTEE RICHARD DEVRIES: So if we go to  
this basis, on a access fee, and we did a  
major calculations for a year and a half, on  
how much we need to help assist us and  
terminal and cruise expenses and stuff like  
that, so are we going to, and we figured out  
how much we needed based on that \$28.00 and  
some-odd cents per spot, per month, I think  
per day per month and, in your statement, if  
that's correct, not per day, and so, not  
seeing financial projections on this per trip

1  
2 basis, are we going to digress from the  
3 amount that we needed or will this per trip  
4 basis keep us even with the amount of...that we  
5 had projected for the \$28.00 per space.

6 TRUSTEE MICHAEL MIERZWA: Trustee  
7 Devries we've done a, a small sample, we've  
8 been out there for several cruises, actually  
9 counting how many times the private lot  
10 operators, the different private lot  
11 operators have accessed the Port on both  
12 weekday and weekend, Sunday specifically,  
13 cruises. The feeling is from the staff that  
14 this \$20 will get us the revenues that we  
15 sought when we went to the \$28.88 per space,  
16 per month. However, I have no idea what the  
17 private parking lot operators will do with  
18 respect to, now that they're going to  
19 actually be charged for this. Whether they  
20 will consolidate their trips, or what their  
21 plans are. What I would promise to the board  
22 and also to the private parking lot operators  
23 I think who are probably still here, is that  
24 at this time next year when we are developing

1  
2 the 2016 budget we will look at the same  
3 things that we looked at when we determined  
4 the per parking space fee, the expenses, of  
5 what it costs us to run the cruise terminal  
6 operations and the money that we're getting  
7 from the access fees, and the money that the  
8 Ports paying in to offset that Delta that we  
9 had between, these are our expenses, this is  
10 what we're making from our cruise line  
11 operating agreements, and this is the Delta  
12 that needed to be paid for out of parking and  
13 we'll take a look at the revenue generated  
14 and we'll adjust the fee's either up or down  
15 accordingly when we develop the budget for  
16 2016, so I'm going to need a year to look at  
17 the numbers, before I would come back to you  
18 with an amendment to the tariff.

19 TRUSTEE RICHARD DEVRIES: So this  
20 would capture some of the, I understand  
21 there's some parking lots outside of this  
22 area that have not been paying a per space

23 ...

24 TRUSTEE MICHAEL MIERZWA: That's,

1  
2 that's not correct, that was alluded to in  
3 the public comments this morning. That is,  
4 that's not true; in fact, there are lots out  
5 there that are not part of the lawsuit that  
6 have been paying us the \$28.88.

7 TRUSTEE RICHARD DEVRIES: But this wont,  
8 we won't capture any money from, let's say  
9 the guy right next door here, he still, he  
10 gets a free pass.

11 TRUSTEE MICHAEL MIERZWA: He, they are  
12 not accessing the terminal. And so this would  
13 not capture any money from a park and walk  
14 operation.

15 TRUSTEE RICHARD DEVRIES: That doesn't  
16 seem very fair to everybody else.

17 TRUSTEE MICHAEL MIERZWA: They're not;  
18 it's an access fee so, for them bringing  
19 their vehicles onto the Port.

20 TRUSTEE RICHARD DEVRIES: I think maybe I  
21 need to say something now.

22 TRUSTEE PETER SIMONS: Well and for the  
23 record, the Access Fee Working Group will  
24 continue to look at these issues, we still

1  
2 have enforcement issues, and we still have  
3 the issues of how we deal with the operator  
4 on "new strand" so the working group will  
5 continue to look at that but with respect to  
6 the tariff, the sense and I would say  
7 consensus was that the tariff could not reach  
8 that operator because he is not accessing the  
9 cruise terminal and the Port property.

10 TRUSTEE RICHARD DEVRIES: Okay.

11 CHAIRMAN BENJAMIN F. HOLLAND JR.: Okay,  
12 any other questions?

13 UNIDENTIFIED SPEAKER: Mr. Chairman, I  
14 just had a couple things to clarify, the  
15 Board item and the couple changes to the  
16 tariff, this tariff item rescinds, in other  
17 words it changes it back, it changes the per  
18 space fee that was brought from \$8.00 to  
19 \$28.88 and made it back to \$8.00 per space  
20 per month until October 1<sup>st</sup> 2014, at which  
21 time the trip charge for everyone will take  
22 effect. So in other words I think there was  
23 some confusion here.

24 TRUSTEE MICHAEL MIERZWA: Yeah, that's



1  
2 correct, thanks John, Mr. Chairman as a  
3 result of the lawsuit there has been some  
4 escrow money that's been put into what's  
5 called the court registry, by the three  
6 Plaintiffs in the case. That money would be  
7 returned to them.

8 CHAIRMAN BENJAMIN F. HOLLAND JR.: How  
9 about the money of the ones that's been  
10 paying it? We're gonna have to get them  
11 theirs back too.

12 TRUSTEE MICHAEL MIERZWA: We're gonna  
13 have to get them, yes correct.

14 CHAIRMAN BENJAMIN F. HOLLAND JR.: The  
15 ones that's paid, give them their money back  
16 cause they're gonna go through this the same  
17 alright, okay?

18 TRUSTEE MICHAEL MIERZWA: Yes.

19 CHAIRMAN BENJAMIN F. HOLLAND JR.:  
20 That's all in the motion right? [Inaudible]  
21 that's all in the motion right?

22 VICE CHAIRMAN EDWARD WALSH III: Um  
23 yes, that's all in the motion, and actually  
24 maybe we need Hulse to, to kind of help us

clarify this motion so we have a...

TRUSTEE HULSE WAGNER: Well the adoption of the change in the tariff accomplishes everything that you said. People who have paid too much money, when they should've paid less money, are due a refund, the people who have been involved in the litigation and paid the right amount of money under the new tariff but paid extra into the registry of the court would be entitled to get that back.

VICE CHAIRMAN EDWARD WALSH: So we don't need to [inaudible], that's effective by adopting the tariff.

CHAIRMAN BENJAMIN HOLLAND JR.: And just for the record, I think we need to make it clear, all we've been doing in the last three months we've been working on this, is trying to find a way to keep those cruise ships coming to Galveston and pay for them. That's all we're trying to do. And we have to generate revenue to do it somehow and parking happens to be one of the segments of revenue

1  
2 that we need to keep continuing to bring  
3 cruise ships into Galveston, and everybody  
4 knows that if there's one thing we do, that's  
5 one thing that everyone in Galveston likes,  
6 is the cruise ships, the strand likes it, the  
7 longshoremen like it, the parking lots like  
8 it, we all like it, somebody gets something  
9 out of it, the hotels get something, the  
10 restaurants get something, so it's the one  
11 thing we so as the Port that I think the  
12 whole city gets an advantage of and we need  
13 to keep them coming and we're going to find a  
14 way to do it, and the only way we can do it  
15 is to generate revenue and this is one of the  
16 forms of revenue that we're going to have to  
17 have in order to make it work. So, you know  
18 as distasteful as it might be to some people,  
19 you know I would hope that they understand  
20 that without the cruise ships, none of us  
21 have a job. So we've got to keep that in  
22 mind. Any other questions? All those in favor  
23 raise their hand. Opposed? Okay we got one  
24 opposed.

1

2

RICHARD DEVRIES: Yes.

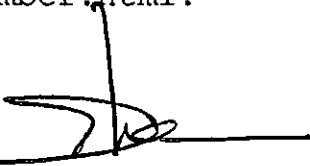
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[END OF HEARING]

C E R T I F I C A T E

I, Alison L. Fine, certify that the foregoing transcript of The Board of Trustees of the Galveston Wharves Meeting, dated September 22, 2014, is a true and accurate record of the proceedings taken from Video 140922 Regular, Part 2, from minute 24:41 to minute 34:46, available at <http://dljstudios.com/tv-2014WB-september.html>.

Signature  \_\_\_\_\_Date 11/10/2014 \_\_\_\_\_

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

**Docket No. 14-06**

**SANTA FE DISCOUNT CRUISE PARKING, INC. d/b/a EZ  
CRUISE PARKING; LIGHTHOUSE PARKING, INC.; and  
SYLVIA ROBLEDO d/b/a 81<sup>st</sup> DOLPHIN PARKING**

**Complainants**

**v.**

**THE BOARD OF TRUSTEES OF THE GALVESTON  
WHARVES and THE GALVESTON PORT FACILITIES  
CORPORATION**

**Respondents**

**AFFIDAVIT OF BRENTON J. ALLISON**

STATE OF TEXAS       §  
                                  §  
COUNTY OF BRAZORIA §

**BEFORE ME**, the undersigned authority, personally appeared Brenton J. Allison, who being duly sworn, deposed as follows:

1. "My name is Brenton J. Allison. I am over eighteen (18) years of age, have not been convicted of a felony or crime involving moral turpitude, and am otherwise capable of making this Affidavit. I have personal knowledge of all matters set forth herein, and they are all true and correct.
2. I am an attorney licensed to practice in the State of Texas, the United States District Court for the Southern District of Texas, and the United States Court of Appeals for the Fifth Circuit. I am currently a Partner in the law firm of Gilman & Allison, LLP.
3. Gilman & Allison, LLP was retained to represent the interests of Complainants Santa Fe Discount Cruise Parking, Inc. d/b/a EZ Cruise Parking; Lighthouse Parking, Inc.; and Sylvia Robledo d/b/a 81<sup>st</sup> Dolphin Parking in this matter and the companion federal court case pending

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in the United States District Court for the Southern District of Texas, Galveston Division. I have personal knowledge of this case and the work performed.

4. The novelty and difficulty of the issues involved in this case required our firm to spend approximately 240 hours prosecuting Complainants' causes of action by (1) investigating claims; (2) drafting pleadings, motions, responses, etc.; (3) drafting and responding to written discovery; (4) attending hearings and mediation; and (5) taking all other necessary actions to perform legal services properly.

5. Based on our firm's fee agreement(s), Complainants have incurred attorney's fees and costs in the amount of \$56,316.37 through October 31, 2014.

6. The attorneys' fees and services charged in this matter and the federal case are necessary and reasonable.

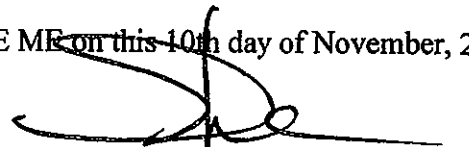
7. The fees our firm charged in prosecuting Complainants' causes of action in this matter and the federal court case are customarily charged in this area for the same or similar services for an attorney with our firm's experience, reputation, and ability, considering the nature of the claims, the amount in controversy, and the time limitations imposed.

**FURTHER AFFIANT SAYETH NOT."**

  
Brenton J. Allison

SUBSCRIBED AND SWORN TO BEFORE ME on this 10th day of November, 2014.



  
Notary Public, State of Texas

# GILMAN \* ALLISON

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-of counsel-

A LIMITED LIABILITY PARTNERSHIP \* ATTORNEYS AND COUNSELORS AT LAW

+ USCG MMO—UNLIMITED  
++ ADMITTED TO PRACTICE IN TEXAS

November 10, 2014

Karen V. Gregory  
Secretary  
Federal Maritime Commission  
800 N. Capitol St. N.W.  
Washington, D.C. 20573

*Via CM/RRR and Email*

**RE: FMC No. 14-06; Santa Fe Discount Cruise Parking, Inc. d/b/a EZ Cruise Parking; Lighthouse Parking, Inc.; and Sylvia Robledo d/b/a 81<sup>st</sup> Dolphin Parking v. Board of Trustees of the Galveston Wharves and the Galveston Port Facilities Corporation; Federal Maritime Commission**

Dear Secretary Gregory:

Please find enclosed for filing, an original and five copies with one additional copy of *Complainants' Response to Motion to Dismiss by the Board of Trustees of the Galveston Wharves and the Galveston Port Facilities Corporation* previously filed in the above entitled case. Please file in your usual and customary manner, indicating the date of filing on the extra copy and return the same to our office in the enclosed self addressed stamped envelope.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours.

GILMAN \* ALLISON, L.L.P.



Alison L. Fine  
Paralegal to Douglas T. Gilman

Enclosures

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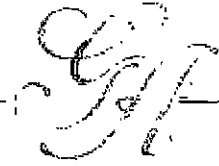
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November 10, 2014

Page 2

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A handwritten signature in cursive script, likely of the initials 'JH', is positioned in the upper right corner of the page, above a horizontal line.

cc:

Anthony P. Brown

Wm. Hulse Wagner

McLeod, Alexander, Powel & Apffel, P.C.

P.O. Box 629

Galveston TX 77553